

Appl. No 10/627,384
Atty. Docket No. 8362C
Amdt. dated December 22, 2005
Reply to Office Action of September 22, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-20 are pending in the present application. No additional claims fee is believed to be due.

Claims 8-13 and 20 have been withdrawn as a result of an earlier restriction requirement.

Response to Restriction Requirement

The Examiner has required, under 35 USC §121, election of a single disclosed invention for prosecution on the merits. Pursuant to this requirement, Applicant hereby elects to prosecute the invention designated in the Office Action as Invention. Claims 1-7 and 14-19 are drawn to this invention. This election is made with traverse.

Traversal of Restriction Requirement

The traversal of the indicated restriction requirement is requested as it is considered improperly made. Applicant respectfully traverses this restriction requirement on the basis that the requisite serious burden on the Examiner set forth in MPEP §803 does not appear to exist. All of the groups relate to the same general subject matter, an array of disposable absorbent articles.

Without a sufficient showing of independence, or relatedness with proper showing of distinctness, the restriction requirement is improper and should be withdrawn.

Rejection Under 35 USC §112, First Paragraph

The Office has rejected claims 1-7 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. According to the Office, claim 1 discloses a toddler's walking, learning, and toilet training stages, but fails to particularly define what these stages are. The stages of development in which a child is walking and learning overlap and encompass several years, and therefore are not distinctly defined by the claim language. Claim 2 further defines the walking stage as comprising a phase wherein the toddler is capable of standing and walking. However, once a toddler is capable of standing and walking, the toddler continues to do so for the remainder of its

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life, presumably. Therefore, the walking stage has no definitive upper boundary, and the scope of the limitation cannot be determined. Likewise, claims 4 and 6 disclose phases that fail to distinctly define the learning and toilet training stages.

Applicant's respectfully traversing this rejection. One skilled in the art would readily ascertain the distinctions of a toddler's walking stage, learning stage and toilet training stage as defined in the specification.

The Office has also rejected claim 14 for indefiniteness contending that claim 14 discloses that each stage of development includes indicia depicting a toddler wearing the chassis design corresponding to the stage of development but it is unclear how a stage of development could include an indicia comprising a picture. Applicant respectfully traverse this rejection as well since it clear from the specification, including the drawings, what is meant by indicia illustrating each stage of development by depicting a toddler wearing the diaper configuration corresponding to the stage of development.

Rejection Under 35 USC §102(e) Over Dragoo et al. (6,229,061)

The Office has rejected claims 1-6 and 14 under 35 U.S.C. 102(e) as being anticipated by Dragoo et al. (6,229,061). According to the Office, Dragoo discloses an array of disposable diapers designed to fit toddlers, as described in column 2, lines 19-37. The diapers each comprise a chassis, as shown in figure 1, and are fully capable of being used in any stage of the toddler's development. The diapers comprise flexible fasteners, as disclosed in column 8, lines 42-65, and high stretch sides, as disclosed in column 4, lines 1-8. The diaper is fully capable of being pulled on, and the diaper is worn around the lower torso of the wearer, and therefore looks like underwear. With respect to claim 14, the claim does not further limit the structural features of the article of claim 1, and therefore, Dragoo anticipates claim 14 for the reasons stated above in the rejection of claim 1.

Applicant respectfully traverses the Office's rejection. In order to anticipate a claim, the reference must teach every element of the claim. MPEP §2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 citing Verdegaal Bros. V. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Dragoo discloses a package containing a plurality of absorbent articles and inserts. Dragoo does not disclose an array of disposable absorbent articles comprising diaper

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configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage). Consequently, claims 1-6 and 14 are not anticipated by Dragoo and the Office is respectfully requested to withdraw the rejection.

Rejection Under 35 USC §102(b) Over Miller (5,839,585)

The Office has rejected claims 1-2, 4, 6, and 14 under 35 U.S.C. 102(b) as being anticipated by Miller (5,839,585). According to the Office, Miller discloses an array of absorbent articles comprising diapers and training pants, as disclosed in column 4, lines 48-50. The diapers each comprise a chassis and are fully capable of being used in any stage of the toddler's development. With respect to claim 14, the Office contends the claim does not further limit the structural features of the article of claim 1, and therefore Miller anticipates claim 14 for the reasons stated above in the rejection of claim 1.

Applicant respectfully traverses this rejection as well. Miller discloses a method for dispensing absorbent articles for use by individuals, especially catemerial products. (Column 2, lines 16-19). Miller does not disclose an array of disposable diaper configurations designed to fit toddlers at different stages of development, much less such an array comprising diaper configurations including chassis designed with features corresponding to a walking stage, learning stage and toilet training stage, respectively. With regards to claim 14, including an indicia depicting a toddler wearing the chassis design further limits the array of diapers claimed in claim 1. Consequently, claims 1-2, 4, 6, and 14 are not anticipated by Miller and the Office is respectfully requested to withdraw the rejection.

Rejection Under 35 USC §103

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. *See In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP §2143.03.

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The Office has rejected Claim 7 under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. (6,229,061) as applied to claim 6 above, and further in view of Matsushita (5,885,264). According to the Office, Dragoo discloses all aspects of the claimed invention with the exception of a wetness indicator. Matsushita discloses a wetness indicator for a training pant, as shown in Figure 1.

Applicant respectfully traverses the Office's rejection of claim 7 under 35 U.S.C. 103 primarily for the reason provided refuting the anticipation rejection of claim 6. Dragoo does not teach or suggest an array of disposable absorbent articles comprising diaper configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage). In addition, Matsushita discloses a training pant including a wetness telling area, however, there is no motivation to combine Matsushita with Dragoo. Even if the necessary motivation were present, the combination does not teach or suggest the invention claimed in claim 7.

The Office has rejected claim 3 under 35 U.S.C. 103(a) as being unpatentable over Miller (5,839,585) as applied to claim 2 above, and further in view of Huskey (5,599,620). According to the Office, Miller discloses all aspects of the claimed invention with the exception of flexible fasteners. Huskey teaches the use of flexible fasteners to provide the diaper with greater comfort, as disclosed in column 1, lines 23-29. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the diaper of Miller with flexible fasteners, as taught by Huskey, to provide the diaper with greater comfort.

Applicant respectfully traverses the Office's rejection of claim 3 under 35 U.S.C. 103 primarily for the reason provided refuting the anticipation rejection of claim 2. Miller does not teach or suggest an array of disposable absorbent articles comprising diaper configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage). In addition, Huskey discloses a disposable diaper having a soft fastener tape, however, there is no motivation to combine Huskey with Miller. Even if the necessary motivation were present, the combination does not teach or suggest the invention claimed in claim 3.

The Office has rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Miller (5,839,585) as applied to claim 4 above, and further in view of Nishikawa et al. (5,591,155). According to the Office, Miller discloses all aspects of the claimed

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invention with the exception of the training pant having a pull-on chassis. Nishikawa teaches a training pant having a pull-on chassis, as shown in figure 1. Unlike tape-tab chassis, the pull-on chassis allows the wearer to pull the garment on and off without assistance, as is desired during toilet training. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the training pant of Miller a pull-on pant, as taught by Nishikawa, to allow the child being toilet trained to pull on the pant without assistance.

Applicant respectfully traverses the Office's rejection of claim 5 under 35 U.S.C. 103 primarily for the reason provided refuting the anticipation rejection of claim 4. Miller does not teach or suggest an array of disposable absorbent articles comprising diaper configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage). In addition, there is no motivation to combine Nishikawa with Miller. Even if the necessary motivation were present, the combination does not teach or suggest the invention claimed in claim 5.

The Office has rejected claims 15-17 and 19 under 35 U.S.C. 103(a) as being unpatentable over Miller (5,839,585). According to the Office, Miller discloses all aspects of the claimed invention with the exception of the indicia depicting the use of the diapers on a standing or toilet training toddler. Miller discloses an array of absorbent articles that includes disposable diapers, as described in column 4, lines 44-50. The articles are designed to fit the same size wearer but serve different purposes, and the purposes are described by indicia on the packaging, as disclosed in column 3, lines 30-40. The examples given by Miller are drawn to absorbent articles for use as catamenial devices, but Miller discloses the invention may also be applied to diapers. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the packaging for the diapers of Miller with indicia to provide the article with a description of the purpose of the diaper, as taught by Miller in the examples given in column 3, lines 30-40.

Applicant respectfully traverses the Office's rejection of claims 15-17 and 19 under 35 U.S.C. 103 primarily since Miller does not teach or suggest an array of disposable absorbent articles comprising diaper configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage).

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The Office has rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Miller (5,839,585) as applied to claim 15 above, and further in view of Nishikawa et al. (5,591,155). According to the Office, Miller discloses all aspects of the claimed invention with the exception of the training pant having a pull-on chassis. Nishikawa teaches a training pant having a pull-on chassis, as shown in figure 1. Unlike tape-tab chassis, the pull-on chassis allows the wearer to pull the garment on and off without assistance, as is desired during toilet training. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the training pant of Miller a pull-on pant, as taught by Nishikawa, to allow the child being toilet trained to pull on the pant without assistance.

Again, Applicant respectfully traverses the Offices rejection of claim 18 under 35 U.S.C. 103 primarily because Miller does not teach or suggest an array of disposable absorbent articles comprising diaper configurations having three distinct chassis designs corresponding to three distinct stages of development (walking stage, learning stage, and toilet training stage). In addition, there is no motivation to combine Nishikawa with Miller. Even if the necessary motivation were present, the combination does not teach or suggest the invention claimed in claim 18.

Double Patenting Rejection

The Office has rejected claims 1, 3, 5, and 7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 4 of U.S. Patent No. 6,648,864. According to the Office, although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claims disclose stages of development identified as third through fifth, the stages of development correspond to the walking, learning, and toilet training stages of development. The conflicting claims are therefore not patentably distinct because they are drawn to the same subject matter and differ only in terminology.

The Office has also rejected claims 15 and 19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 4 of U.S. Patent No. 6,648,864. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claims disclose stages of development identified as first and second, the stages of development correspond to the walking and toilet training stages of development. The conflicting claims are therefore

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not patentably distinct because they are drawn to the same subject matter and differ only in terminology.

Per this response, Applicant has filed a terminal disclaimer fully complying with 37 CFR 3.73(b).

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. 102 and 103 as well as the double patenting rejection in light of the terminal disclaimer provided with this response. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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By


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